

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021**

**Present: Shri U. N. Behera, Chairperson
Shri A. K. Das, Member
Shri S. K. Parhi, Member**

Case No. 28/2018

M/s. Shri Mahavir Ferro Alloys Pvt.Ltd.,	Petitioner
Vrs.		
GRIDCO Limited	Respondent

In the matter of: An application under Section 142 of the Electricity Act, 2003 for non-implementation of order dated 05.02.2018 of the Commission passed in Case No. 44 of 2016.

Case No. 29/2018

M/s. Vivacity Renewable Energy Pvt. Ltd.	Petitioner
Vrs.		
GRIDCO Ltd. & another	Respondents

In the matter of: An application under Section 142 of the Electricity Act, 2003 for non-implementation of order dated 05.02.2018 of the Commission passed in Case No. 45 of 2016.

For Petitioner: Shri R. P. Mahapatra, the authorized representative of both M/s. Shri Mahavir Ferro Alloys Pvt. Ltd. & M/s. Vivacity Renewable Energy Pvt. Ltd.

For Respondent: Shri S. S. Nayak, Sr. GM (PP), GRIDCO Ltd., Shri Nabin Kumar Misra, Manager (Elct.), CESU in Case No. 29 of 2018.

ORDER

Date of hearing: 20.11.2018

Date of order: 09.04.2019

The petitions filed by M/s. Shri Mahavir Ferro Alloys Pvt. Ltd. (Case No. 28/2018) and M/s. Vivacity Renewable Energy Pvt. Ltd. (Case No. 29/2018) are heard analogously since the both petitions are of similar in nature.

2. The authorized representative of the petitioners submitted that they are operating 1 MWp Grid-Interactive Solar PV Power Generation Plants under Rooftop PV & Small Solar Power Generation Programme (RPSSGP) under JNNSM and supplying power to GRIDCO. The Commission at Para-14 & 15 of its order dated 05.02.2018 passed in

Case Nos. 44 & 45/2016 had observed the followings:-

- “14. *Heard the parties. Issues in both the cases mostly relate to non-adherence of GRIDCO to PPA.*

The billing procedure has been defined in the clause 5(a)(i) of the PPA which shall be on the basis of joint meter reading promptly following the end of each month for the energy supplied and amount will be due on the fourth working day following the delivery of billing invoice by the Petitioner. GRIDCO's argument to treat the modified billing procedure basing upon Export statements of ABT compliant meters by EBC (Energy Billing Centre) installed latter, as “change in law” does not find strength due to presence of existing PPA which needs to be honoured. Therefore, the joint meter reading shall be taken by OPTCL / DISCOMs and the project proponent on the first day of every month at the delivery point as per Clause 8.1 (i) of the PPA.

In response to request of petitioner to open the LC, GRIDCO has stated that they have not opened LC except for M/s Vivacity Renewable Energy Ltd due to fund crunch. We observe that the PPA executed between parties herein have provision of LC in section 5(b) and the manner of operation of the same as well as subsequent paragraphs. Agreed provisions have to be honoured by the respondent. We find no reason to allow deviation to this. Therefore the respondent shall complete all formalities on LC in line with PPA within one month. On rebate and DPS, GRIDCO has stated that the practices adopted are followed uniformly for all the 8 solar generators as per PPA. We find no ambiguity in these issues for rebate and delayed payment to the project proponent.

Regarding deduction of Rs.0.61/ Kwh, for not maintaining 1 lakh units per month generation standard, GRIDCO stated that the same has been agreed in a meeting between the parties subsequent to the signing of PPA. The Petitioner stated that in that meeting it was decided that average annual generation would be 12 lakh units and not one lakh unit per month. The Commission observes that this modification is outside PPA and has not been approved (by Commission) yet. Therefore, in case it has been agreed by parties, the same is to be included in PPA with appropriate amendment/ inclusion and placed before Commission for approval.

15. *We direct that the provisions in the PPA in various issues that are binding in nature must be strictly followed by both parties.”*

3. The representative of the petitioners submitted that in spite of the above direction of the Commission, the respondent GRIDCO has not implemented the same in letter and spirit. Further, the petitioners had made a submission to GRIDCO on 17.04.2018 for compliance of the aforesaid order dated 05.02.2018 of the Commission. But no reply has been received from GRIDCO so far. The petitioners submitted that since no arrangement was made for recording the joint meter reading, the petitioners have submitted the monthly electricity bills based on the EBC data made available by GRIDCO and in this process payment is being made by GRIDCO on about 17th day of

the month but rebate is being availed by GRIDCO in violation of the provisions of the PPA. In their additional submission the petitioners have submitted that as per Clause 18.1 (iii) of the PPA *“Meter readings taken jointly at the appointed date and time will be signed by the representatives of OPTCL/DISCOMs and project proponent. If the project proponent representative is not present for joint meter reading then the meter reading taken by the DISCOMs shall be considered final provided a signed copy of the meter reading is sent to the project proponent within twenty four (24) hours of such reading of the main metering system or back-up metering system as the case may be”*. The petitioners further submitted that now the meter reading is being taken by the DISCOMs through MRI. Therefore, they have prayed the Commission to direct the DISCOMs to give signed hard copies of the joint meter reading to the petitioners on 1st day of every month.

4. The petitioner submitted that as per the above directions of the Commission Letter of Credit (LC) should have been opened within one month i.e. by 05.03.2018, but the same has not been opened so far. As per the provisions in the PPA, LC shall be opened for payment to the solar generators. Expression of interest from the solar generators is not required for opening of the LC.
5. On the issue of deduction from the bills towards lesser generation, the petitioners have submitted that vide their letters dated 17.04.2018, they have requested GRIDCO for implementation of Commission's order dated 05.02.2018 citing detailed reasons as to why deduction towards lesser generation is not permissible according to statute and also not acceptable to the petitioners, who do not agree to include the same in the existing PPA. The petitioners have submitted that the record notes of discussions in the meeting held on 05.04.2013 is not an accepted notes of discussion, as it has been unilaterally prepared and not signed by the solar PV developers. GRIDCO has not explained how it has incurred losses on account of lower generation by the solar PV developers which is beyond their control. Further, no deduction in generation tariff is stipulated by the Commission for generation from conventional as well as RE sources. They submitted that since any deduction from the bills for lesser generation is not permissible according to the statute, it is not acceptable to them and they do not agree to include the same in the existing PPA. The petitioners have further submitted that the statement of GRIDCO for generating more by maintaining additional DC capacity or with best practices adopted for the solar power plants can be considered as a fraud,

because any generation of power from DC batteries through invertors cannot be considered as solar generation.

6. In view of the above, the authorised representative of the petitioners stated that in such situation they have no option but to approach the Commission for relief u/S. 142 of the Electricity Act, 2003. He prayed the Commission to direct GRIDCO to implement the aforesaid order dated 05.02.2018 immediately and to impose a penalty of Rupees One Lakh on GRIDCO for its wilful contravention of the directions issued by the Commission with an additional penalty per day during which contravention continues.
7. The respondent GRIDCO had submitted that the prevailing practice of releasing payment to all renewable energy generators against their monthly invoices is as per the EBC energy export statement which is generally issued on a fixed date every month after serving the BSP bills to the DISCOMs for the respective month. If in some months the petitioners have received EBC export statement after 5th day of the month, it may be in exceptional cases due to any technical problems at EBC. Accepting the monthly energy invoices of the petitioners as per the JMR statement and then the final monthly reconciliation as per the EBC statement is time consuming and against the prevailing practice. However, GRIDCO can accept the same as per the orders dated 05.02.2018 of the Commission, if such bills are raised by the petitioners with supporting documents.
8. Regarding opening of LC in favour of the petitioners GRIDCO stated that LC has already been opened in favour of M/s. Vivacity Renewable Energy Pvt. Ltd. as per their request. No request has been received from M/s. Shri Mahavir Ferro Alloys Pvt. Ltd. LC can be opened by GRIDCO after expression of interest by the solar generators.
9. GRIDCO further submitted that the 1 MW Solar PV Projects of the petitioners are commissioned in the State under RPSSGP Scheme of MNRE and the Commission vide its order passed in Case Nos. 58 to 105/2010 had determined the tariff of Rs. 18.52 per unit for such projects considering the project cost of Rs. 17 Crore per 1 MW solar capacity with CUF of 18.5%. Considering CUF of 18.5%, the petitioners should export 1.62 MU annually, which they have to maintain with best practices adopted for the solar power plant. None of the 8 nos. of Solar PV Developers have generated the

desired output of 1.621 MU annually with the CUF of 18.5% as stipulated vide order dt.09.07.2010 in Case No.58/2010 & 105/2010. Though there is no provision in the PPA regarding minimum monthly generation of 1 lakh unit, the respondent No.1 made an agreement with the 8 nos. of Solar PV Developers for a minimum monthly generation, failing which the tariff shall be reduced by Rs.0.61/- per kwh for the defaulting month. In view of each of the 8 nos. Solar PV Developers generating less than 12 lakh units annually, the Developers are being paid Rs.17.91/- per kwh instead of approved tariff of Rs.18.52/- per kwh for defaulted financial year. GRIDCO has taken a conscious decision with all the 8 nos. of Solar PV generators of the State under RPSSGP scheme to set the justified penalty of Rs. 0.61 per unit for less annual generation than 1.20 million units per year. Further, RPO compliance by GRIDCO is affected due to very low drawal from these solar generators. GRIDCO has started levying the penalty of Rs. 0.61 per unit from FY 2013-14 onwards on those solar PV generators who are generating less than the standard level of generation. As per the directions of the Commission in its order dated 05.02.2018 passed in Case Nos. 44 and 45/2016, GRIDCO is taking steps to amend the PPA taking in to account the penalty provision as these 1 MW solar developers have already agreed to this point and are willing to pay the penalty. GRIDCO has submitted that they will place the amended PPA before the Commission within one month for the 8 nos. of 1 MW solar PV developers under RPSSGP scheme of MNRE.

10. In view of the above, GRIDCO has prayed the Commission to accept their views and reject both the petitions filed by the petitioners under Section 142 of the Electricity Act, 2003.
11. The respondent CESU has submitted that they are respondent in Case No. 29/2018 only and since they are not the signatory of the PPA with the petitioner in this case, therefore, no cause of action arises against them. CESU further submitted that as per the order passed in Case No. 45/2016, joint meter reading should be taken by OPTCL/DISCOMs and project proponent on the first day of every month at the delivery point as per Clause 8.1 (i) of the PPA. Now for drawal/purchase of power by GRIDCO from the petitioner, GRIDCO has put its own import & export Apex meters and readings of these meters are being taken by GRIDCO/OPTCL through Dump in presence of the representatives of CESU and they are sending the end file of dump data to the Balugan Electrical Division of CESU for its use.

12. Heard the parties at length and their written notes of submission are taken into record. It is observed that the Commission vide its order dated 05.02.2018 passed in Case Nos. 44 & 45/2016 have already deliberated the issues of (i) Billing on joint meter reading, (ii) Availing of rebate and DPS, (iii) Opening of LC and (iv) Deduction from bills for lesser generation and passed order to abide by the PPAs on the said issues. However, on the issue of deduction from bills for lesser generation the Commission had observed as mentioned below:-

“Regarding deduction of Rs.0.61/ Kwh, for not maintaining 1 lakh units per month generation standard, GRIDCO stated that the same has been agreed in a meeting between the parties subsequent to the signing of PPA. The Petitioner stated that in that meeting it was decided that average annual generation would be 12 lakh units and not one lakh unit per month. The Commission observes that this modification is outside PPA and has not been approved (by Commission) yet. Therefore, in case it has been agreed by parties, the same is to be included in PPA with appropriate amendment/ inclusion and placed before Commission for approval.”

13. But now in the present cases, on the above issue of deduction from the bills towards lesser generation, the petitioners have submitted that the record note of discussions in the meeting held on 05.04.2013 is not an accepted notes of discussion, as it has been unilaterally prepared and not signed by the solar PV developers.
14. As per law any power purchase by GRIDCO is to be proceeded by approval of the Commission under Section 86 (1) (b) of Electricity Act, 2003. Thus the transactions till date, between parties has not sanctify of law. Therefore, as per our order dated 05.02.2018 the parties were advised to bring about changes in the PPA on this issue and place the same before the Commission for its approval. However, till date this has not materialised. In absence of a legally bound agreement unilateral deduction for lesser generation is not permissible. However, once the PPA is approved GRIDCO shall act upon the same. We direct parties to file the PPA before the Commission within three months for approval.
15. In the present cases, on the issue of billing on joint meter reading, the respondent GRIDCO has submitted that they will accept the monthly energy bills based on joint meter readings, if such bills are raised by the petitioners with supporting documents. On the other hand, the petitioners have submitted that no arrangements was made for recording the joint meter readings, hence they are unable to raise bills based on the same. In view of the above, GRIDCO is directed to make necessary arrangements in consultation with OPTCL/DISCOMs and project proponent to take joint meter

reading on the 1st day of the succeeding month and billing should be made by the petitioner in line with the provisions of the PPA.

16. The Commission observed that in their order dated 05.02.2018 GRIDCO was directed to complete all formalities within one month for opening of LC in line with the provisions in the PPA. Therefore, it should not be an issue. If M/s. Mahavir Ferro Alloys Pvt. Ltd. desires they should intimate GRIDCO immediately and LC shall be opened within one month.
17. With the above observations and directions, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson